

THE MUNICIPAL COURT
415 WEST OCEAN BOULEVARD
P.O. BOX 2840
LONG BEACH, CALIFORNIA 90801
ELVIRA S. AUSTIN, JUDGE
(310) 491-6241

March 3, 1997

FILED

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Commission on
Judicial Performance

Roland Selman
Commission Counsel
Commission on Judicial Performance
State of California
101 Howard Street, Suite 300
San Francisco, CA 94105

Re: Answer to Inquiry - Your Reference: No. 140

Dear Mr. Selman:

This is my answer and statement regarding the Commission on Judicial Performance's investigation. It is my desire to keep this case brief and simple, but that it be considered in the totality of circumstances surrounding it, rather than on the emphasis given to the 2:00 a.m. telephone call and last conversation with Lakewood sheriffs on May 17, 1995, concerning the O.R. of Ms. Moreno.

I met Ms. Moreno in the summer of 1984 or 1985 stepping off a Greyhound bus arriving from Mexicali, Mexico. She was carrying a purse and a broken sandal. She entered as a domestic for a family I know in Palos Verdes, California. From that moment on, I have been a source of reference only for her and her husband, and up to the case at hand, they have proved to be the type of immigrants this country is proud of, from cleaning toilets and washing cars to managing a one hundred seventy-five unit apartment building. The first thing they did was get legal residency under the amnesty law of 1986. By May 16, 1995, there was not an outstanding ticket or any other criminal antecedent in Ms. Moreno's life, however had been a victim many times while managing smaller units in rough neighborhoods in Long Beach and Compton. Ms. Moreno never worked for me in any capacity, not as a domestic or as a caretaker for my gravely ill mother who required daily attention, nor did she provide any favors to me in this or any other regard, and we did not and do not exchange social occasions. However, every time she sought a better job she used me as a reference.

Roland Selman
Commission Counsel
March 3, 1997
Page 2

As a human being, I have many flaws, but also many strengths, and a strong sense of justice and fairness for all is one of such strengths. This case started May 15, 1995, when a deputy sheriff in Lakewood took a complaint from a few tenants at the Eucalyptus Avenue address in Bellflower that Ms. Moreno manages regarding a pyramid game. It is listed that it occurred at 6:30 p.m. At 9:05 p.m. the same day, Ms. Moreno called my residence to tell me that the Sheriffs were in her house and that they wanted her for something she had not done. She said she was in Culver City and was afraid to go home, even though her two minor children were there. I responded that I could do absolutely nothing for her.

On the 16th, Ms. Moreno called my court several times and left messages with the clerk and the bailiff, messages to which I never responded. Towards 4:30 p.m., she walked into my courtroom looking very pale and distressed. I did not ask her the particulars of any accusation, reinstated I could not get involved and told her she needed a lawyer. We put her in contact with Mr. Poland, whose office is approximately four hundred yards from our parking lot. I told Ms. Moreno that lawyers don't come for free, and I told Mr. Poland that my name was not to be a consideration. She told Mr. Poland, in my presence, that the Sheriffs knew her very well, particularly deputy Tom Hicks, as she was on his beat and that she had been commended by him for doing a very good job in keeping a very crime free establishment. Mr. Poland called deputy Hicks in my presence and on a three way telephone, deputy Hicks said that he did not know much about the complaint because it was the night shift, but if she came in, an O.R. would not be a problem, that he knew her well. I left immediately thereafter. I understand that is what Ms. Moreno did - she walked into the Lakewood Sheriff's station to be booked, answer questions and be released. Deputy Hicks and investigator Mary Parker did release Ms. Moreno during their shift on May 17, 1995. *No charges have ever been filed, nor has the case ever been presented to the district attorney.*

When I talked to counsel Dennis Coupe, I mentioned that it was never my intention to order an O.R., and I understood him to say perception is what counts. In the first letter of inquiry I got from the Commission, Sgt. Conley accused me of unethical dealings with Mr. Poland, in that he was a lawyer I appointed, paid by County voucher and used for my friends

Roland Selman
Commission Counsel
March 3, 1997
Page 3

as a quid pro quo, as well as ordering and threatening Sgt. Conley. In listening to the tapes that were so kindly provided me and written material from all parties concerned, I cannot help but get the perception that the Lakewood sergeants have had some negative experiences with some judges and it poured over to me for the conversations of May 17. In regard to appointing lawyers, I am a proud member of the original commission in the mid 1970's, headed by Judge Elsworth M. Beam and attorney Edwin Wilson, which became our local rule, where no lawyer would be appointed except through the list of the Long Beach Bar Association and through the then secretary, Nila Carney. To my knowledge, my department never appointed any other way, and Mr. Poland was not on that list and I do not remember ever signing a County voucher for payment to Mr. Poland. I hand carried that rule to the Criminal Court's Bar Association on whose Board of Directors I then served, and they shared it with the Los Angeles County Bar Association. It became somewhat of a rule for the Los Angeles courts.

The perception of Sgt. Melton is that I have a slurred speech, that I was rambling, and that I was high on something, maybe Valium, a substance that I would not recognize. I have never ever taken, and for that matter have been free of all my life, any prescription drugs or medication, except Tagamet and an occasional antibiotic. My only illnesses have been a weak stomach or an ulcerated stomach inherited from both parents, two cases of skin cancer, chronic sinusitis and a couple of tooth abscesses. I was meticulously trying, to the point of being repetitious, to exude to Sgt. Melton that if an O.R. release had seven criteria, Ms. Moreno exceeded that and would have ten points in her favor for O.R. release. Deputy district attorney, Dolores Turner, who apparently knew me from working in my court, described my speech as having a thick Hungarian accent, and stated in her interview that it was her opinion that I was most definitely *not* under any influence of any substance.

Sgt. Melton also mentions that he has to appear in my court and that he is afraid of me. I do not know of one case in my whole career where I have intimidated any witness, much less an officer. If there was tardiness or unpreparedness, we dealt with it accordingly, but never with threats, and I don't have one threatening letter or one telephone call to any supervisor of any deputy in any branch of law enforcement. My motto has always been to

Roland Selman
Commission Counsel
March 3, 1997
Page 4

deal with the problem directly, and if I did not have anything good to say, I would keep it to myself. I have never threatened anyone with contempt and never cited anyone with contempt, except in the case of *Delaney v. Superior Court* 50 Cal.3d 785, that concerned a Los Angeles Times Newspaper writer and reporter who invoked the shield law on something she had witnessed and published. I ordered her to answer, nevertheless, and at 4:00 p.m. I told her she had until 10:00 a.m. the next day, and if she refused, she would be found in contempt and that happened. My view of the matter prevailed in the Supreme Court of California in a unanimous decision.

The tapes in particular substantiate the fact that in every call I made I identified myself by name and was followed by the statement that I was not acting in my judicial capacity. The original conversation with Sgt. William Conley very clearly states that I do not wish him or them to do anything that they would otherwise not do. The emphasis was that Ms. Moreno met and exceeded all criteria for an O.R. release. Sgt. Ronald Melton gave me some telephone numbers for the O.R. Unit and through them I was connected with deputy district attorney Dolores Turner. Her position at the time was unknown to me. The lengthy tape recorded conversation speaks for itself, and she and investigator Arguello are not complaining parties in this case, but rather serve as strong evidence that I was following established channels for an O.R. release, rather than making a judicial order. Sgt. Conley, in his conversation with Mr. Peter Gubbins, indicates that I made an attempt at a judicial order to him, and it is he who is the complaining party in this case. The tape recorded conversations with the sergeant sound courteous, professional and devoid of any mandates.

The conversation with Sgt. Melton, towards 2:00 a.m. in the morning, contains tedious and repetitive inquiries on my part as to what can be done for a person that had surrendered to their department, met the highest criteria for O.R. release, and yet was put in jail while the O.R. Unit or District Attorney could not act because there was no complaint and no detective assigned. I do sound frustrated at this and exhausted. However, there were no authoritative words or voice towards Sgt. Melton.

Roland Selman
Commission Counsel
March 3, 1997
Page 5

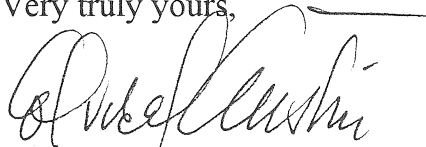
For every call I made, and there were six or more, I received three or four from Ms. Moreno, all highly emotional because her world was falling apart. These telephone calls began coming to my residence the night of May 15, to my office all day May 16, and then towards the morning hours of the 17th. This occurred at a time when I was going through a crisis with my mother, a cancer patient, who had just developed a skin eating disease, and that very day I picked up a new medicine at a cost of \$6.00 per tablet (Sporanex). I had a flare of my own ulcers and was on Tagamet.

All in all, corroborated by the taped telephonic conversations, it is evident that I had done nothing incorrect from the beginning, and was emphasizing that I would not and did not want to act in a judicial capacity, but merely be a reference person for Ms. Moreno. Only I know the regret I feel having been drawn into the Moreno/Lakewood sheriffs case. However, an innocent woman, mother of two children, spent eighteen hours in jail unnecessarily.

I wish to reserve my right to have an attorney argue my case and augment the record if need be, and will otherwise rely on the tape recorded conversations and my statements herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Very truly yours,



ELVIRA S. AUSTIN
Judge of the Municipal Court

ESA:lln
cc: Dennis Coupe, Trial Counsel